



# TESTIMONY

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## **Comprehensive Development Agreements: Special Purpose Authority**

**Testimony Before the  
Senate Committee on Transportation and Homeland Security**

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## **Comprehensive Development Agreements:** **Special Purpose Authority**

Traditional transportation funding methods in Texas have not kept up with the growing transportation needs of our State and left a large gap between the funding that is available and what is necessary to address the challenges we face. Previous legislatures have enacted laws that provide opportunities for the Texas Department of Transportation (TxDOT) and other transportation agencies to fill that gap, and the department has been utilizing these options for suitable projects since they became available to help address the needs of our citizens. These alternative project development and financing methods run the gamut from bonds, pass through financing and federal stimulus funds, to publicly and privately financed toll facilities through the use of Comprehensive Development Agreements (CDAs).

Partnering with the private sector using CDAs has greatly expedited project delivery for critical elements of our transportation system. It has also allowed for the investment of approximately \$3.5 billion in state/federal funds to leverage more than \$10 billion worth of long-term transportation improvements over the past eight years. General CDA authority for TxDOT and Regional Mobility Authorities (RMAs) expired August 31, 2009. Limited special purpose CDA authority for specifically exempted projects and toll projects that are not financed by a private entity, such as design-build projects, for those same entities will expire on August 31, 2011. As such, the committee is being charged with examining the public policy implications of CDAs, including whether they should be reauthorized to construct specific roadways. The following testimony reviews the history of CDAs, the potential role they can play in addressing the future needs of the State, and which projects could utilize this option.

### **CDA HISTORY**

The earliest version of the CDA was referred to as an Exclusive Development Agreement, as outlined in HB 749 from the 72nd Regular Legislative Session in 1991. This legislation authorized the then-Texas Turnpike Authority to develop projects through public/private partnerships, and the Authority was given “broad latitude” in negotiating the terms and conditions of these agreements. In 1997 the Texas Turnpike Authority was transferred to TxDOT, along with its enabling statutes. The authority to enter into Exclusive Development Agreements had not been used at the time of the transfer. Legislation passed during the 77th Legislative Session in 2001 (SB 342) created RMAs and provided TxDOT with increased ability to utilize such agreements.

In 2003, the Texas Legislature authorized several new tools the Transportation Commission and the department could use to realize the benefits of private sector participation. By injecting market forces into the process of planning infrastructure, a means of ensuring that private financing, when needed, was provided that enabled these funds to be available for the

development of facilities needed to respond to transportation demand, leveraging limited traditional highway funding and providing drivers with more choices that ensure safer, more reliable travel.

CDAs are entered into using a procurement process that allows TxDOT to select the proposal that provides the best value to the State. CDAs are agreements that provide for the design and construction, rehabilitation, expansion, or improvement of a transportation project as outlined in Transportation Code §223.201-209, and may also provide for the financing, acquisition, maintenance, or operation of such a project. During the 80<sup>th</sup> Legislative Session (SB 792), Transportation Code § 223.210 was added providing a moratorium on the use of CDAs with some exemptions. This law also changed the expiration date of the general authority for TxDOT and RMAs to enter into a CDA to August 31, 2009, except for the exemptions discussed previously. The bill also authorized the use of the CDA project delivery method by County Toll Road Authorities and Regional Tollway Authorities.

Through the use of CDAs, the department has moved one step closer to narrowing the gap between our transportation needs and our transportation assets, and has helped our citizens realize our transportation goals such as improved traffic flow and air quality in areas of greatest need and demand. Without the option of CDAs, several projects would not be available for use by the traveling public within the near-term, such as SH 130 in Central Texas and some long-awaited North Central Texas projects, including the IH 635 LBJ Managed Lanes, DFW Connector and North Tarrant Express facilities, which are desperately needed in the region to improve mobility and reduce congestion.

## **CDA PROJECTS**

Several projects have moved forward as a result of utilizing this project delivery method. The terms of these agreements can vary regarding the level of private sector participation. A design-build contract allows for property acquisition, design and construction to occur simultaneously under one contract but does not include financial participation from the private sector or a long-term lease of the facility. These agreements have many advantages, including:

- Single point of responsibility for design and construction
- Contract is usually fixed price, allowing for earlier cost certainty
- Expedited project delivery by overlapping portions of design, construction, and right of way acquisition
- Developer innovation through close coordination between the construction contractor and designer
- Shifting the responsibility of many of the inherent risks associated with design and construction to the private sector. Examples can include cost overruns, schedule delays, inclement weather, material shortages, etc.

A concession agreement gives the developer responsibility to perform some or all of the development, financing, operation and maintenance of a facility for up to 52 years. In exchange, the developer is provided some type of ongoing revenue, usually from tolls collected for use of a facility. These projects can potentially provide for revenue sharing with TxDOT over the life of the contract. In some cases, such as SH 130 Segments 5 and 6, the agreement may also include an upfront lump sum payment from the developer to TxDOT. Other potential advantages of concession agreements include:

- Developer assumes the risk for cost, schedule, traffic and revenue, financing, and quality control/assurance
- Removes the financial burden of operating and maintaining the facility from TxDOT
- Reduces or eliminates the amount of public funds needed to construct the project

### **DFW Connector: Design-Build agreement signed October 6, 2009**

The DFW Connector is dedicated to improving mobility along SH 114 and SH 121 in a safe, efficient, reliable and environmentally sensitive manner. Construction began in February 2010 on 8.4 miles of the 14.4-mile project to rebuild the corridor through Southlake, Grapevine and the north edge of the Dallas/Fort Worth International Airport. The \$1.02 billion project is completely publicly funded using \$250 million in ARRA funds, \$107 million from Proposition 14 funds, and \$667 million in gas tax revenues. Using design-build helped TxDOT qualify for federal stimulus funds because it accelerated the date work could begin on the project. At its widest point on SH 114, the DFW Connector will have up to 24 lanes, including 14 main lanes, four toll-managed lanes and six frontage road lanes. This phase of the project is estimated to be complete by 2014.

Design-build has become a widely used delivery method by dozens of other state DOTs, and the White House has identified the DFW Connector project as the largest highway project receiving federal stimulus funds and one of the top 10 projects in the country they will showcase as part of the national transportation program.

### **IH 635/LBJ Managed Lanes: Concession agreement signed September 4, 2009**

The goal of this project is to relieve severe congestion on 13 miles of IH 635 (LBJ) from just west of IH 35E (near Luna Road) to just east of US 75 (near Greenville Avenue), and south on IH 35E from IH 635 to Loop 12. In February, 2009 the Texas Transportation Commission conditionally awarded the LBJ project to LBJ Infrastructure Group, which will finance, design, construct, operate and maintain the 13-mile corridor for 52 years.

LBJ Infrastructure Group (formerly LBJ Development Partners), which includes the Dallas Police and Fire Pension System among other equity contributors, will rebuild the corridor using an innovative new design, enabling the new highway to be constructed while minimizing the need for additional right of way. It will be completed after a maximum five year construction period and will include: eight rebuilt main lanes (each one foot wider than they are now); additional shoulders on the outside of the main lanes; continuous frontage roads (two or three lanes wide); and six barrier-separated managed toll lanes located between or below all frontage

roads. For a state investment of approximately \$490 million, these improvements will provide \$2.7 billion of needed infrastructure to the Dallas area. Original estimates for public investment were higher; however the innovative, competitive approach of the CDA process reduced the need for public equity.

### **North Tarrant Express: Concession agreement signed June 23, 2009**

The North Tarrant Express (NTE) is dedicated to improving mobility along north I-35W, Northeast Loop IH-820 and SH 121/183 Airport Freeway through a regionally supported managed lane system. In the initial phase of the project, North Tarrant Express Mobility Partners (NTEMP) will plan, finance, design, construct, operate and maintain 13 miles of Loop 820 and SH 121/183 (Airport Freeway) from IH 35W to the SH 121 split in Tarrant County, improving the North Texas region's access to DFW International Airport. In addition, NTEMP has submitted a plan for similar improvements to portions of I-35W and the Loop 820 interchange at I-35W.

Construction begins in late 2010 on the first project. In addition to the design, right of way and utilities, the project will rebuild and expand 13 miles along I-820 and SH 121/183 from I-35W to the SH 121 split. This \$2.05 billion project will rebuild the existing four to six main lanes, add four toll-managed lanes, plus frontage roads and auxiliary lanes to approximately double the existing capacity. Space has been reserved in design for additional main lanes and managed lanes on portions of the project that will be added at a later date.

The next phase of the NTE project is currently under consideration by TxDOT. Recent TxDOT-NTEMP discussions would have NTEMP plan, finance, design, construct, operate and maintain the interchange at Northeast Loop IH 820 and IH 35W, plus improvements to the 6.5 miles of IH 35W from IH 820 to IH 30. This project will enhance safety through the elimination of all left-hand exits at the interchange and improve mobility in the region. This will all be delivered with no public subsidies required.

The development of the interchange and IH 35W segments of the North Tarrant Express is estimated to have a \$930 million design-build value. The department will assist in utility relocation and right of way acquisition for key parcels with long lead times. Long term operations and maintenance expenses are not included in these dollar values. Operations and maintenance expenditures are estimated at approximately \$450 million, and these will be the responsibility of NTEMP over the life of the agreement, which will end in approximately 2061.

Further north, TxDOT will use traditional funding methods to deliver the next 3.3 miles of IH 35W from the IH 820 interchange to US 81/287. This portion of the project is estimated to require roughly \$200 million for development, including design, right of way acquisition, utility relocation, construction and oversight costs. Along with previously budgeted amounts, we

anticipate the use of roughly \$135 million in Proposition 14 bonds to help develop this project. Upon completion, this portion could become part of the NTE and be operated and maintained by NTEMP.

Overall, the project is receiving accolades for its innovation even before the dirt has started flying. The NTE was recently honored as the 2009 Global Transport Deal of the Year by the Infrastructure Journal in March 2010. This Comprehensive Development Agreement project is among the first managed lane projects in the United States to be developed under this delivery model, and the initial phase is the only project to reach financial close in 2009 where the private sector assumed so many of the project risks. While much of the risk is transferred to the private sector, all segments of the NTE will feature revenue sharing bands, allowing TxDOT to share in the financial benefits should the project exceed projected revenues. More information about the project can be found online at <http://www.northtarrantexpress.com/>.

### **SH 130, Segments 5 and 6: Concession agreement signed March 22, 2007**

SH 130 is a project being developed under public-private partnership with the SH 130 Concession Company. Under the agreement, the developer is designing, constructing, operating and maintaining the 40-mile extension of the roadway from Austin to Seguin for 50 years. The developer is also financing the entire project, including all right of way costs, thereby lifting the financial burden from the state and political subdivisions in which the project is located.

The \$1.3 billion private investment in the state transportation system has already provided a \$25 million upfront payment from the developer to TxDOT, and it will bring the state a share of all toll revenues collected throughout the 50-year term that will be used for other regional mobility improvements. In addition, the maintenance provisions included in the agreement will save over \$700 million in public funds over the life of the contract through the developer's maintenance services. The SH 130 extension, opening in 2012, is from SH 130/SH 45 Southeast near Creedmoor to I-10 east of Seguin.

### **THE FUTURE OF CDAS**

The private sector has the resources and willingness to continue to invest in these agreements, and the industry and stakeholders continue to learn from past experiences to continue to modify these agreements to provide the most benefits to the users and our citizens. All stakeholders agree that such agreements will not work for every project, but they can certainly be helpful, and have already proven successful, in delivering critical large-scale, complex projects that may require many years to develop using traditional financing and/or design and construction delivery methods. The projects currently being developed under a CDA, and those future projects that are feasible for development under a CDA, are designed to add new capacity, and actively manage that capacity, on some of our State's most congested corridors. Providing CDA authority for specific projects is an idea that continues to receive growing interest and support.

These agreements can be very attractive in these financially constrained times, however they are about more than just closing a budget gap. They can help allocate project risk away from the State and spur innovation by placing more responsibility on the private sector over the life cycle of the road and bridge elements. We realize CDAs are not the complete answer to our transportation challenges, but they can be one tool to help us meet the demands of our growing communities. Many states around the nation have successfully pursued public-private partnership options in various forms and models, and such innovative and forward thinking has helped meet their needs even when traditional funds are lacking. TxDOT continues to communicate with these states on lessons learned to ensure we choose the best development option, based on the scope of each particular project.

The Senate Transportation and Homeland Security Committee has been tasked with determining if the CDA model should be re-authorized, and if it should be limited to specific projects. As such, staff from then-Chairman Carona requested the department provide a current list of projects feasible for development under a CDA to assist with their review of this charge. Through several meetings with representatives of Metropolitan Planning Organizations (MPOs) and local toll project entities, we are continually researching what projects around the state are feasible for development using the public-private partnership model. Following are five projects which we feel are financially feasible and could reasonably be ready for construction within the next four years based on current MPO plans. It is worth noting these could be developed under other financing tools, however in our research there is a consensus that a CDA could bring the overall best value to the State and would help accelerate needed projects in a way that would attract strong interest from the private sector.

#### **IH 35E from IH 635/LBJ in Dallas to US 380 in Denton**

This proposed 28-mile project would upgrade the existing aging freeway that is currently exceeding its capacity on a daily basis. The cost to develop the project far exceeds the available public funds, and in working with the communities and stakeholders along the route the consensus is it is a viable option for development through a CDA.

#### **SH 183 from west of SH 161 in Irving to IH 35E in Dallas**

The present SH 183 facility was constructed more than three decades ago and does not adequately handle the current traffic, nor will it acceptably serve future demand. The long-range transportation plans for the Dallas-Fort Worth Metroplex show a trend of increased travel in the SH 183 corridor as a result of urban growth throughout the Mid-cities, with one quarter of all travel throughout the Metroplex generated in this region. The trend toward urban growth in this area along with the current heavy travel demand necessitates improvements to existing facilities.

#### **SH 99/Grand Parkway in the Houston Region**

The Grand Parkway is an important part of the Houston-Galveston Area Council's regional mobility plan. While currently included as an exempted project from the CDA moratorium, should a local toll project entity opt not to develop the project, the State would no longer have

the ability to consider alternative funding options as of August 31, 2011 to deliver this vital mobility alternative to the region in the near term.

Following is a more comprehensive list of potential CDA projects as identified through our meetings with local planning and tolling entities and includes those listed above as well as long-term or yet to be determined projects.

<b>Project Name</b>	<b>Project Limits</b>	<b>Responsible Entity</b>
IH 35E (Managed Lanes)	Dallas County, Denton County IH 635/LBJ to US 380 in Denton	TxDOT, primacy previously waived by North Texas Tollway Authority (NTTA)
SH 183 (Managed Lanes)	Dallas County West of SH 161 in Irving to IH 35E in Dallas	TBD, under NTTA jurisdiction
North Tarrant Express (Managed Lanes)	Tarrant County Segments 2E, 3A, 3B, 3C, and 4 in Fort Worth	TxDOT
SH 99 (Grand Parkway)	Greater Houston Region Approximate 180 loop around the region	TBD, under the jurisdiction of multiple counties
Hempstead/US 290 (Managed Lanes)	Harris County IH 610 west to Grand Parkway Northwest (SH 99)	TBD, under Harris County Toll Road (HCTRA) jurisdiction
IH 10 (Managed Lanes)	Harris County, Waller County SH 6 to FM 359 (Brazos River)	TBD, under HCTRA and Waller County Toll Road Authority
SH 288 Toll Lanes	Harris County, Brazoria County US 59 to Grand Parkway (SH 99) in Houston	TBD, under HCTRA and Brazoria County Toll Road Authority
SH 249 Toll Lanes	Harris County North Harris County Line to North of Spring Cypress Road	TBD, under HCTRA jurisdiction

It is important to note that, as mentioned above in relation to SH 99, while Regional Tollway Authorities (such as the North Texas Tollway Authority) and County Toll Road Authorities (such as the Harris County Toll Road Authority) retain the authority to develop projects under the CDA model, if they are not able to arrange the necessary funding or they opt to not develop a project after August of 2011 then ask TxDOT to consider delivering the project, TxDOT may be unable to meet those regional needs unless new CDA authority is provided by the Legislature.

## **CONCLUSION**

It is a known fact that projected transportation funding levels will not cover the transportation needs of Texas. Without legislative action, the authority to utilize design-build and all other types of CDAs will end as of August 31, 2011 for TxDOT and regional mobility authorities. Without proper funding and the ability to enter into CDAs, fewer projects will have the opportunity for development with fewer options to procure and deliver them.

We can now look back on a growing list of successfully implemented CDAs not only in Texas, but also around the nation and the world. Authorizing the use of CDAs for specific projects provides a needed tool where it is deemed necessary while making sure the ability to use this important project delivery method is limited for special purposes. In August, CNBC named Texas as the top state for business in the country, citing transportation and infrastructure as a lead contributor. We agree with their assessment and feel it is important more so now than ever before to consider all funding options to meet the transportation needs of Texas and sustain our great economy.